

STATE OF MICHIGAN  
IN THE SUPREME COURT

COMPLAINT AGAINST:

Hon. Beverley Nettles-Nickerson  
30<sup>th</sup> Circuit Court  
Veterans Memorial Courthouse  
313 W. Kalamazoo St.  
PO Box 40771  
Lansing, MI 48901

Supreme Court No. 133929  
JTC Formal Complaint No. 81

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REPLY TO BRIEF IN SUPPORT OF THE COMMISSION'S DECISION AND  
RECOMMENDATION FOR ORDER OF DISCIPLINE

ORAL ARGUMENT REQUESTED

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## ARGUMENT

### I. THE EXAMINER'S ARGUMENTS REGARDING DANIEL NICKERSON'S VISITATION WITH HIS CHILDREN AND RESIDENCY ARE CONTRADICTED BY THE EVIDENCE.

The Examiner's argument at page 30 of his Brief regarding Daniel Nickerson's visitation with the Nickerson children is meritless. The Examiner argues that Judge Beverley Nettles-Nickerson's "claim that the home was unoccupied other than for visitation by [Mr.] Nickerson is persuasively controverted by" the testimony Rhonda Mitchell, a babysitter for the Nickerson children. Ms. Mitchell's testimony does not lend credence to the argument that Mr. Nickerson was residing in the marital home. Her testimony only confirms the fact that Mr. Nickerson was at the marital home during the time period he had visitation with the Nickerson children. She testified that Mr. Nickerson requested babysitting services at the marital home on July 7, 2005; another date a few weeks after July 7th; February 1, 2006; February 4, 2006; February 15, 2006; February 18, 2006; and March 1, 2006. Vol IX pgs 1424-38. Ms. Mitchell never testified that Mr. Nickerson requested babysitting services from her during the 10 days prior to August 15, 2005, which is the date the divorce complaint was filed, nor did Ms. Mitchell testify that Mr. Nickerson was residing in the marital home during that ten-day period. She had no knowledge as to such matters.

Additionally, the Examiner's reliance on the telephone records is unsound. The Examiner claims that the telephone records support an argument that Mr. Nickerson was living in the marital home. However, testimony at the hearing revealed that Mr. Nickerson did spend time at the marital home during his visitation periods. Volume XXIII pages 3821-22. Thus, the phone calls made to/from the marital home to/from

Judge Nettles-Nickerson's cell phone are not the "smoking gun" the Examiner would have this Court believe they are. The truth is that Mr. Nickerson stayed at the marital home during his visitation periods because he was not permitted to take the children around his stepfather, in Grand Rapids.

The Examiner also conveniently ignored the testimony of Michael Quinn, Judge Nettles-Nickerson's second divorce attorney. Mr. Quinn's testimony revealed that when he asked Mr. Nickerson where he was living at the time the divorce was filed, Mr. Nickerson informed him that he was living in Kent County. Vol XXI pgs 3540-44. Another important aspect of Mr. Quinn's testimony supports the proposition that Mr. Nickerson only stayed at the marital home during his visitation periods. Mr. Quinn also testified that during the pendency of the divorce case, an issue arose regarding Mr. Nickerson's taking the Nickerson children to his mother's home in Grand Rapids because of the criminal history of Mr. Nickerson's stepfather. Vol XXIII pgs 3546 and 3823. Mr. Quinn testified that Mr. Nickerson was precluded from taking the children to his mother's home (where he was living) when his stepfather was present. Vol XXI pg 3546-47. That is precisely why Mr. Nickerson would periodically return to the marital home after Judge Nettles-Nickerson moved out. Significantly, the Examiner chose to ignore Mr. Quinn's testimony in his Brief.

**II. THE EXAMINER'S CLAIM THAT JUDGE NETTLES-NICKERSON HAD MATTERS SCHEDULED FOR OCTOBER 31, 2005 IS CONTRADICTED BY THE WEIGHT OF THE EVIDENCE.**

At page 33 of his Brief, the Examiner discusses the testimony of Angela Morgan, who indicated that she set eleven scheduling conferences for October 31, 2005, and

would not have done so if she knew Judge Nettles-Nickerson had been taking that day off. The problem with Ms. Morgan's testimony on direct examination (as relied on by the Examiner) is that it unraveled on cross-examination. On cross examination, Ms. Morgan admitted that scheduling conferences generally resolve themselves prior to their scheduled date. Vol XI pg 1934-356. In fact, the following exchange occurred between the undersigned and Ms. Morgan:

THOMAS: So we don't know as we sit here today, you have given testimony indicating that you checked the docket and that it showed 11 Status Conferences for that day, and you indicated that you took issue with something that you saw in an affidavit prepared by Mr. [sic] Morales, you are unable to tell us whether what I just described occurred on October 31<sup>st</sup>, 2005, wherein you resolved all 11 of those Status Conferences that were up?

MORGAN: No.

THOMAS: You cannot do that?

MORGAN: No.

THOMAS: Thank you.

And, by the way, by way of follow-up, if they were all resolved by you, prior to that day, lawyers sign all the forms, get them to you by the time you require, got all of that paperwork in your possession, would you not have had a docket up for that day because you would have resolved it and the only thing that would have been up was that group of lawyers on the TRO matter that showed up unannounced; am I right or am I wrong?

MORGAN: Right.

Vol XI pgs -1937-38.

The issue regarding whether Judge Nettles-Nickerson had or did not have a docket for that date was hotly contested before the Master. Trinidad (Lopez) Morales,

Judge Nettles-Nickerson's judicial assistant, testified that she checked Judge Nettles-Nickerson's docket to determine whether any matters were scheduled for October 31, 2005. Vol XX pgs 3414-15. Based upon her review, Ms. Morales testified that Judge Nettles-Nickerson did not have any matters scheduled for that date. Vol XX pg 3415. During the hearing, Ms. Morales was informed that testimony from a former court employee (Angela Morgan) alleged that Ms. Morales' testimony was inaccurate. Vol XX pg 3415. The following exchange ensued:

THOMAS: Did somebody from my Office contact you and let you know that the statements included in your Affidavit were being challenged?

MORALES: Yes.

THOMAS: As a result of receiving that information from my Office, did you make any effort to go back and check that date, October 31<sup>st</sup>, 2005, to see whether what you had said to us previously in an Affidavit was accurate or inaccurate?

MORALES: Yes, I did.

THOMAS: And what did you find?

MORALES: I found the same results that I did the first time when I provided the Affidavit.

THOMAS: And I want to make sure that everyone is clear on what the results were. Were the results that my client had no docket on October 31<sup>st</sup>, 2005 or that she did have something up?

MORALES: The results that I found is that there were none scheduled that came up. If it did, I went into our CourtView Court System, that would print the schedule for any given day of the Judge, and I could not find any records of anything being scheduled for that day.

\* \* \*

THOMAS: Respondent's Proposed 97 and 98, are those the two documents that you brought to the Court here for us today?

MORALES: Yes.

THOMAS: As a result of your checking the records for October 31<sup>st</sup>, 2005?

MORALES: Yes.

\* \* \*

THOMAS: Ma'am, I would like you to start with 97.... Could you tell Judge Borrello what Exhibit 97 is.

MORALES: This is a printout of the CourtView Schedule Report for the date of October 31<sup>st</sup>, 2005.

Judge Nettles-Nickerson's name is entered at the top. And that asks for a date, the report layout would indicate the display format, which means that it would display any hearings that had been scheduled for that day.

When I clicked the okay button it indicates at the bottom that no records were found.

THOMAS: Ma'am, I want to ask you this, looking at that Exhibit that you have now talked to us about, is it your belief that the statements that you made in your original affidavit were accurate - -

MORALES: Yes.

THOMAS: - - that she had no docket up for that day?

I want to ask you this: If that was your belief, and that was your opinion, that you were correct, why did you run Exhibit 98? Tell the Judge what Exhibit 98 is?

MORALES: When I ran Exhibit 98, this was from a different screen within the CourtView System, and on the top it indicates Judge's Calendar Display. I put in Judge Nettles-Nickerson's name, and, again, the date of October 31<sup>st</sup>, 2005. For event type I also put in Settlement Conference, which I believe is what the Hearing dispute was about, that Settlement Conferences were held that day.

And, then, I clicked the search button and a pop-up came up that indicated no records were found to that search criteria.

THOMAS: Ma'am, I want to ask you this question: Based upon those two checks that you made, those two screen checks that you



made, I want to know if you are prepared to answer this question, and if so, what your answer would be: Based upon your digging into this after being contacted by my Office to try to make a determination as to what, if anything, was on my client's docket for October 31<sup>st</sup>, 2005, do you believe that she had anything on her docket that day, and I don't care whether it was a Settlement Conference or a Pre-Trial, or a trial, or anything else?

MORALES: I don't believe that she did.

Vol XX pgs 3415-20. The Examiner's argument that Judge Nettles-Nickerson had a docket scheduled for October 31, 2008 is contradicted by even his own witnesses.

**III. THE EXAMINER'S ARGUMENT THAT JUDGE NETTLES-NICKERSON MADE FALSE STATEMENTS IN A LETTER SHE SENT TO AN ATTORNEY IGNORES HER CANDID EXPLANATION OF HER ERROR.**

At page 35 of his Brief, the Examiner argues that Judge Nettles-Nickerson made false statements in a letter she sent to Greg Liepshutz. The Examiner states that those assertions are contradicted by a September 8, 2005 transcript in the case of *Jones v City of Lansing*, Case No. 04-1322-CZ. Judge Nettles-Nickerson acknowledged that she made an error in her letter to Mr. Liepshutz. However, the Examiner completely disregarded Judge Nettles-Nickerson's candid explanation regarding her misstatement, as did the Master and Commission. Judge Nettles-Nickerson did not have a transcript available to her when she wrote the February 6, 2007 letter. When she wrote that letter to Mr. Liepshutz, she was relying on her memory of events of a hearing that took place one and one-half years earlier.

When Judge Nettles-Nickerson wrote to Mr. Liepshutz and stated that counsel for neither party had appeared at the September 8, 2005 hearing, she misspoke. What she meant to say was that neither attorney of record appeared, because Mr. Liepshutz had

an attorney from his firm stand in for him. During her testimony, Judge Nettles-Nickerson acknowledged that Mr. Liepshutz had someone from his office appear in his place. Vol XXIII pg 3851. She further acknowledged sending the letter at issue to Mr. Liepshutz. Vol XXIII pg 3851. Judge Nettles-Nickerson did not make any false statements; she simply made an error in her letter. Her statement that neither counsel of record appeared, while wrong, was not fraudulent and was not intended to deceive.

Furthermore, the *Jones* case was put on the no progress docket because there was a four and one-half month period where Judge Nettles-Nickerson believed nothing had occurred on the case. During her testimony, Judge Nettles-Nickerson acknowledged that long after the no progress hearing at which she dismissed the *Jones* case, she learned that discovery had not, in fact, been completed. Vol XXIII pg 3852. She also acknowledged that had she known at that time that discovery had not been completed she would not have dismissed the case. Vol XXIII pgs 3852-53. When asked to explain why she was unaware that discovery had not yet been completed, Judge Nettles-Nickerson testified that she had adjourned case evaluation and discovery several times, had facilitative mediation, and the case never settled. Vol XXIII pg 3855. She incorrectly assumed the discovery period had closed, and admitted her mistake. Vol XXIII pg 3852 and 3855. The Master's and Commission's findings regarding this allegation are not supported by the weight of the evidence.

## CONCLUSION

Judge Nettles-Nickerson requests that this Court return her to her duties as an Ingham County Circuit Court judge. She is convinced that this Court will reject the majority, if not all, of the Commission's findings after fair consideration of this matter. In the event that this Court believes that some level of discipline is necessary, the one-year suspension already served by her is more than sufficient. As for the costs sought by the Commission, all charges sought for payment of the Commission's private counsel must be rejected. Once that is done, this Court is urged to consider the application of an equitable percentage, based upon what was charged in the Complaint, what was dismissed, and what charges this Court believes were proven, if any, by a preponderance of the evidence.

Respectfully submitted by:

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Philip J. Thomas (P31298)

Dated: June 9, 2008